

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**S.F., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Southampton, NY, Employer**

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**Docket No. 20-1503  
Issued: August 3, 2021**

*Appearances:*  
*Capp P. Taylor*, for the appellant<sup>1</sup>  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

On August 11, 2020 appellant, through her representative, filed a timely appeal from a June 24, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish a bilateral knee condition causally related to the accepted factors of her federal employment.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

### **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On May 15, 2014 appellant, then a 53-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained a bilateral knee condition due to factors of her federal employment, including standing for long periods of time. She noted that she first became aware of her condition and its relationship to her federal employment on April 29, 2014. Appellant stopped work on April 29, 2014 and returned to work in a modified-duty capacity on May 10, 2014.

In support of her claim, appellant submitted a June 12, 2014 report from Dr. Allen Fein, a Board-certified specialist in family medicine, who provided physical examination findings and diagnosed osteoarthritis. Dr. Fein opined that appellant's federal employment was partially responsible, along with her weight, for her bilateral knee condition.

By decision dated August 8, 2014, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that her diagnosed knee condition was causally related to the accepted factors of her federal employment.

On September 4, 2014 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In support of her request, appellant submitted medical reports, dated April 25, 2013 through August 28, 2014, from Dr. Peter G. Sultan, a Board-certified orthopedic surgeon.

A hearing was held on February 9, 2015. During the hearing, appellant discussed her employment duties and indicated that she required bilateral knee replacement surgery.

By decision dated March 18, 2015, OWCP's hearing representative affirmed the August 8, 2014 decision, finding that the evidence of record was insufficient to establish that appellant's bilateral knee osteoarthritis was causally related to the accepted factors of her federal employment.

On June 9, 2015 appellant requested reconsideration and submitted additional medical evidence, including a March 12, 2015 report from Dr. Fein and an April 17, 2015 report from a physician assistant.

By decision dated September 2, 2015, OWCP denied modification of the March 18, 2015 decision.

On August 15, 2016 appellant, through counsel, requested reconsideration.

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<sup>3</sup> Docket No. 18-1030 (issued April 5, 2019).

In an August 9, 2016 report, Dr. Fein described appellant's employment duties and history of injury. He indicated that appellant's employment duties and obesity caused abnormal wear and tear on her knees and hips sufficient to wear down the cartilage.

By decision dated December 26, 2017, OWCP denied modification of the September 2, 2015 decision.

On April 23, 2018 appellant, through counsel, appealed to the Board. By decision dated April 5, 2019,<sup>4</sup> the Board affirmed the December 26, 2017 decision, finding that appellant had not met her burden of proof to establish a bilateral knee condition causally related to the accepted factors of her federal employment.

On April 9, 2020 appellant, through counsel, requested reconsideration.

In a February 20, 2020 report, Dr. Fein reviewed Dr. Sultan's May 23, 2013 and August 28, 2014 reports. He noted that osteoarthritis in the knees caused cartilage to become stiff and lose elasticity, making the knees more susceptible to damage. Dr. Fein indicated that, over time, cartilage degradation stretched the tendons and ligaments causing pain. He described appellant's employment activities and noted that she frequently walked on uneven concrete surfaces, entered and exited her vehicle, and ascended and descended stairs. Dr. Fein opined that appellant's employment duties caused wear and tear in the cartilage of her knees. He found that the thinning of the cartilage and the smaller than usual joint space could be seen in appellant's x-rays. Dr. Fein noted that the osteophytes on the edges of the joint reflected inflammation usually caused by repeated wear as opposed to a single event. He opined that appellant's obesity was a contributing factor to her osteoarthritis, but indicated that the movement of her knees provided the wear and tear on the cartilage and not the weight itself. Dr. Fein explained that appellant's diagnoses of hypertension, Type 2 diabetes mellitus, thrombocytopenia, and leukopenia were not known causes of osteoarthritis.

By decision dated June 24, 2020, OWCP denied modification, finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed bilateral knee condition and the accepted factors of appellant's federal employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,<sup>6</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related

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<sup>4</sup> *Id.*

<sup>5</sup> *Supra* note 2.

<sup>6</sup> *R.M.*, Docket No. 20-0342 (issued July 30, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.<sup>7</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>8</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.<sup>9</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>10</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>11</sup>

In any case where a preexisting condition involving the same part of the body is present, and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>12</sup>

### ANALYSIS

The Board finds that this case is not in posture for decision.

In support of her claim, appellant submitted a February 20, 2020 report from Dr. Fein who reviewed Dr. Sultan's May 23, 2013 and August 28, 2014 reports and described appellant's work activities. Dr. Fein explained that osteoarthritis in the knees caused cartilage to become stiff and lose elasticity, making the knees more susceptible to damage. He noted that over time, cartilage degradation stretched the tendons and ligaments causing pain. Dr. Fein indicated that appellant frequently walked on uneven concrete surfaces, entered and exited her vehicle, and ascended and descended stairs. He opined that appellant's employment activities caused wear and tear in the cartilage of her knees. Dr. Fein noted that the thinning of the cartilage and the smaller than usual

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<sup>7</sup> *V.P.*, Docket No. 20-0415 (issued July 30, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>8</sup> 20 C.F.R. § 10.115; *S.A.*, Docket No. 20-0458 (issued July 23, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>9</sup> See *B.H.*, Docket No. 18-1693 (issued July 20, 2020); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>10</sup> *L.S.*, Docket No. 19-1769 (issued July 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>11</sup> *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>12</sup> Federal (FECA) Procedure Manual, Part 2 – Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); see *S.M.*, Docket No. 19-1634 (issued August 25, 2020).

joint space could be seen in appellant's x-rays. He indicated that the osteophytes on the edges of the joint reflected inflammation usually caused by repeated wear as opposed to a single event. Dr. Fein opined that appellant's obesity was a contributing factor to her osteoarthritis, but indicated that the movement of her knees provided the wear and tear on the cartilage and not the weight itself. He advised that appellant's hypertension, Type 2 diabetes mellitus, thrombocytopenia, and leukopenia were not known causes of osteoarthritis.

The Board finds that this report from Dr. Fein is sufficient to require further development of the medical evidence. Dr. Fein provided a comprehensive understanding of the medical record and case history. His affirmative opinion on causal relationship provides a pathophysiological explanation as to how appellant's work activities caused her diagnosed condition. Accordingly, the Board finds that Dr. Fein's opinion, while insufficiently rationalized to meet appellant's burden of proof, is sufficient, to require further development of the medical record as to whether her bilateral knee osteoarthritis is causally related to the accepted factors of her federal employment.<sup>13</sup>

It is well established that proceedings under FECA are not adversarial in nature and that, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. OWCP has an obligation to see that justice is done.<sup>14</sup>

On remand, OWCP shall refer appellant, a statement of accepted facts, and the medical record to a specialist in the appropriate field of medicine. The chosen physician shall provide a rationalized opinion as to whether appellant's diagnosed conditions are causally related to the accepted factors of her federal employment. If the physician opines that the diagnosed conditions are not causally related, he or she must explain, with rationale, how or why the opinion differs from that of Dr. Fein. Following this and such other further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's claim.

### **CONCLUSION**

The Board finds that this case is not in posture for decision.

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<sup>13</sup> See *J.S.*, Docket No. 19-0892 (issued November 4, 2020); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354, 360 (1989).

<sup>14</sup> *T.S.*, Docket No. 20-1177 and 20-1296 (issued May 28, 2021).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 24, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 3, 2021  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board